

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)
Complainant,) 8 U.S.C. 1324a Proceeding
)
v.) CASE NO. 91100032
)
JAMES L. BABER and JEFF BABER,)
d.b.a. "BABER BROTHERS FARM")
Respondent.)

)

DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT
CONTAINING CONSENT FINDINGS

E. Milton Frosburg, Administrative Law Judge

Appearances: Joseph R. Dierkes, Esquire
for the Immigration and
Naturalization Service.
Don Witt, Esquire
for the Respondent.

Procedural History

This proceeding was initiated before me when, by Notice of Hearing On Complaint Regarding Unlawful Employment dated March 18, 1991, Respondent was advised of the filing by the Immigration and Naturalization Service (INS) of a Complaint alleging violations of the statutory prohibitions against unlawful employment of unauthorized aliens and of the employment verification requirements of Section 101 of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. Section 1324a.

The Complaint, incorporating the Notice of Intent to Fine (NIF) which was served on Respondent on approximately January 9, 1991, contained four counts alleging violations of Sections 274A(a)(1)(A) and/or 274A(a)(2) and 274A(a)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. Sections 1324a(a)(1)(A) and/or 1324a(a)(2), and 1324a(a)(1)(B).

The parties have reached a settlement in the instant case. In support of their settlement, they have submitted the following documents which form the basis of this Decision and Order:

1. A Joint Motion to Submit Consent Findings, executed by Joseph R. Dierkes, Esq. for Complainant and by Don Witt, Esq. for Respondent.

2. A document entitled Settlement Agreement executed by Ron Sanders, District Director, INS for Complainant on June 4, 1991, and by James L. Baber for Respondent on June 11, 1991, by Jeff Baber for Respondent on June 12, 1991, and approved as to form by Joseph R. Dierkes, Esq. and by Don Witt, Esq.

The agreement of the parties satisfies the controlling regulation for disposition by the Administrative Law Judge of "[a]ny agreement containing consent findings..." at 28 C.F.R. Part 68.12.

Findings of Fact and Conclusions of Law

I conclude that the document entitled Settlement Agreement is fair and satisfactory, and there is no reason not to accept it within the contemplation of 28 C.F.R. Part 68.12.

Respondent admits each and every allegation set forth in the Complaint, thereby conceding violations of Sections 274A(a)(1)(A) and 274A(a)(1)(B) of the Act.

On the basis of the Consent Findings, I find and conclude that Respondent has violated Sections 274A(a)(1)(A) and 274A(a)(1)(B) of the Act, 8 U.S.C. Sections 1324a(a)(1)(A) and 1324a(a)(1)(B), with regard to the employment of the individuals identified in the Complaint.

Accordingly,

1. The Joint Motion to Submit Consent Findings is granted.

2. The Settlement Agreement referred to above, including the recitation of facts contained therein, is adopted and made a part of this Decision and Order according to its terms as if fully set forth herein.

3. Respondent shall cease and desist from violating the provisions of Section 274A(a)(1)(A) and/or 274A(a)(2) of the Immigration and Nationality Act, 8 U.S.C. Section 1324a(a)(1)(A) and/or 1324a(a)(2).

4. Respondent shall pay a civil money penalty in the amount of \$3,000.00 (three thousand dollars), payment to be made in the manner specified in the Settlement Agreement.

5. Each party shall bear its own attorney fees, other expenses, and costs incurred in this proceeding.

6. This Decision and Order has the same force and effect as a Decision and Order made after a full administrative hearing.

7. The entire record on which this order is based consists solely of the Complaint, the Notice of Hearing, the previous orders of the Court, the Motion to Submit Consent Findings, the Settlement Agreement, and this Order.

8. The Parties waive any further procedural steps before the Administrative Law Judge.

9. The parties waive any right to challenge or contest the validity of this Decision and Order.

10. As provided in 28 C.F.R. Part 68.51, this Decision and Order shall become the final order of the Attorney General unless, within thirty (30) days from this date, the Office of the Chief Administrative Hearing Officer shall have vacated or modified it.

11. The hearing to be scheduled in or around Kansas City, Missouri is cancelled.

IT IS SO ORDERED this 25th day of June, 1991, at San Diego, California.


E. MILTON FROSBURG
Administrative Law Judge

Executive Office for Immigration Review
Office of the Administrative Law Judge
950 Sixth Avenue, Suite 401
San Diego, California
(619) 557-6179

EMF/KJF:mc
0513P